

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Representative Ralph Tanner at 9:00 a.m. on February 8, 2000 in Room 313-S of the Capitol.

All members were present except: A quorum was present.

Committee staff present: Avis Swartzman, Revisor of Statutes
Ben Barrett, Legislative Research Department
Carolyn Rampey, Legislative Research Department
Renaë Jefferies, Revisor of Statutes

Conferees appearing before the committee:

Others attending: See Attached List

Hearings and discussion on bills and resolutions concerning the governance of education, K-12 were opened.

Commissioner of Education, Dale Dennis, presented information to the committee members concerning the number of tie votes in State Board of Education proceedings. (Attachment 1)

Representative Tanner announced that Thursday's meeting will be a joint meeting with the Senate Education Committee. He also stated that the committee would begin to work those bills that are a part of the various education reform proposals on the following Monday.

Staff member Carolyn Rampey of the Legislative Research Department presented a memo she had prepared on the Peabody decision. (Attachment 2) She stated that at the time the article was adopted the State Board of Education and the Regents had statutory authority but not constitutional authority. At the time, the SBOE was largely an advisory group and the power was held by the State Superintendent who did have Constitutional authority. The change was made because of fragmentation of supervisory authority.

Staff member Avis Swartzman presented to the committee members a memorandum on The Education Article of the Kansas Constitution and also a memorandum she had prepared for the Legislative Educational Planning Committee. She explained some of the language involved and answered questions from the committee members.

Representative Tanner stated that he felt the Peabody Decision's major shortcoming lies in the absence of actual research. He also stated that the committee would re-visit this issue again in the future.

The next meeting is scheduled for February 10, 2000.

The meeting was adjourned at 10:35.

HOUSE EDUCATION COMMITTEE

GUEST LIST

DATE: February 8, 2000

NAME	REPRESENTING
Renee Ackman	KNEA
Dante Juice	
John Koepke	KASB
Bill Brady	Ks Gov't Consulting
Bob Vancrum	Blue Valley USD 229
Don Ryan	USD 321 Kaw Valley
Hershel Poor	Citizen
Jean Barber	KADC
Catherine Hedge	Geary County Schools USD 475
Craig Grant	FWEA
Jim Yavally	USD #512
Jerry Wenceter	USD 303



Kansas State Department of Education

120 S.E. 10th Avenue
Topeka, Kansas 66612-1182

February 8, 2000

TO: House Education Committee

FROM: Dale M. Dennis, Deputy
Commissioner of Education

SUBJECT: Votes of State Board of Education

Attached is a summary of the votes taken by the State Board of Education, including tie votes, for the past 16 years. This information was recently requested by the Committee during a discussion on the constitutional amendment.

Between January 1, 1994, through December 31, 1999, there were 4,776 votes of which 4,590 passed, 134 failed, and 52 resulted in tie votes.

We hope this information will be of assistance to you.

Division of Fiscal & Administrative Services

785-296-3871 (phone)

785-296-0459 (fax)

785-296-6338 (TTY)

www.ksbe.state.ks.us

House Education
2-8-00
Attachment 1

Kansas State Board Of Education Votes 1984-1999

Year	Passed	Failed	Tied	Issue with Tie Vote
1984	390	11	5	
				1) Postsecondary and home schools as interim study issues (April) 2) FY 1986 Issue paper on early childhood education for the handicapped (April) 3) Amendment to motion approve certification and teacher education regulations as recommended by staff (July) 4) Amendment to motion to approve Board legislative committee recommendations by adding a \$5/credit hour increase in credit hour state aid for community colleges and Washburn U in order to increase teachers' salaries (November) 5) Motion to direct staff to investigate how home schooled students could be assessed and the fiscal and legal implications of such assessment (December)
1985	427	24	4	
				1) Regional concept for distribution of funds to local educational agencies under the new Vocational Education act (January) 2) Motion to begin the process for hiring a state board attorney (April) 3) Motion to support proposed NASBE dues increase (July) 4) Funding included in the KSDE budget for area vocational-technical education school capital outlay and vocational education program aid (August)
1986	570	23	4	
				1) Amendment to motion for a task force to study special education teacher/pupil ratios and delivery models (March) 2) Motion to postpone vote on appointments to the State Council on Vocational Education (April) 3) Motion to make appointments to the State Council on Vocational Education per staff recommendations (April) 4) Amendment of motion to delete class size information from Kansas minimum competency assessment data collection (November)
1987	499	4	0	
1988	258	0	1	
				1) Proposed amended Education and Teacher Certification regulation 911-107a, concerning library media (December)-
1989	232	3	0	
1990	257	0	0	
1991	237	1	0	
1992	218	1	0	
1993	244	13	0	
1994	232	2	0	
1995	276	14	0	
1996	229	10	0	

Year	Passed	Failed	Tied	Issue with Tie Vote
1997	183	10	21	
<ol style="list-style-type: none"> 1) Election of Mildred McMillon as Chairman (January) 2) Election of Kevin Gilmore as Chairman (January) 3) Approval of contract with KU to conduct Governor's At-Rick Academy (February) 4) Amendment to motion to approve contract with KU to conduct Governor's At-Rick Academy (February) 5) Motion to table action on planning subgrants for charter schools (March) 6) Approval of planning subgrants for charter schools (March) 7) Motion to table appointments to Professional Standards Board (June) 8) Nominations to Professional Practices Commission (June) 9) Motion to direct staff to proceed w/process to eliminate requirement for on-street motorcycle safety training (June) 10) Motion to continue contract w/KU to develop & administer mathematics, reading and writing assessments (June) 11) Motion to continue assessment contract w/KU and to direct staff to conduct validation studies on norm-referenced tests given in the state (June) 12) Motion to deny a Visiting Scholar Certificate for USD 259 (June) 13) Motion to form task force to develop alternative accreditation for non-public schools (June) 14) Motion to authorize board chair to work w/KSHSAA to accommodate non-accredited schools (June) 15) Motion for study of norm-referenced tests (June) 16) Motion for study of standardized tests (June) 17) Motion to make amendments to motorcycle safety training regulations (July) 18) Motion to continue assessment as planned in current year (July) 19) Motion to table motion to continue assessment as planned in current year (July) 20) Motion amend motion to adopt revised state assessment plan (August) 21) Motion on composition of curricular standards writing committees (September) 				
January 1998	175	11	17	
<ol style="list-style-type: none"> 1) Motion to choose McRel to review curriculum standards in mathematics and communication arts (January) 2) Motion to submit proposed educator licensure regulations for review by Attorney General and D of A (January) 3) Composition of the Assessment Advisory Council (April) 4) Motion to approve agenda (May) 5) Motion to approve agenda w/proviso (May) 6) Amendment to motion to approve agenda w/proviso (May) 7) Approval of Board mission statement (May) 8) Approval of revised mathematics standards (June) 9) Substitute motion for approval of revised mathematics standards (June) 10) Certification Review Committee appointment: 1st ballot (June) 11) Certification Review Committee appointment: 2nd ballot (June) 12) Increased funding for Governor's At-Risk Academy (August) 13) Increased funding for Ag in the Classroom (August) 14) Approval of KSDE FY 2000 budget (September) 15) Motion to amend KSDE FY 2000 budget to exclude School To Work (September) 16) Approval of KSDE FY 2000 budget, excluding School To Work (September) 17) Motion to deny a teaching certificate (November) 				
1999	163	7	0	
Total 1984-1999	4590	134	52	

MEMORANDUM

From: Office of Revisor of Statutes *AS*
Date: August 20, 1999
Re: The Education Article of the Kansas Constitution

The language found in the education article (Article 6) grew out of the work of an Education Advisory Committee which worked in conjunction with the Education Committee of the Legislative Council. In a publication entitled The Education Amendment To The Kansas Constitution (Pub. No. 256 - December 1965), the Education Committee stated that the purpose of its report was to provide information about the legal basis for the education system of the state and the need for strengthening and improving the system. On page 20 of the report is found the following statement which indicates that the committee intended both the State Board of Regents and the newly created State Board of Education to be selected by gubernatorial appointment:

“In considering different ways of selecting board members, there was general agreement that the present method of selecting members of the Board of Regents and the State Board of Education as now constituted through appointment by the governor, has been satisfactory.”

At the time the above cited report was being prepared, the constitutional officer for public schools was the state superintendent of public instruction. The state board of education was statutory and its powers were mainly advisory. When introduced, during the 1966 budget session, the proposition to rewrite Article 6 provided for both state boards to be selected by gubernatorial appointment; however, the proposition was amended in the Senate to provide for an elected State Board of Education.

In 1970, the State Board of Education adopted rules and regulations which required boards of education of school districts to adopt rules and regulations governing the conduct of all persons employed by or attending schools of the district. The Peabody (Marion county) Board of Education took issue with the State Board of Education and filed a lawsuit contending that the State Board lacked authority (statutorily delegated) to enact or enforce such a regulation. At the trial level the school district board prevailed. The trial court held that section 2 of article 6 was not self-executing and that the State Board had no statutory authority to issue the regulation in question. Appeal was

taken to the Supreme Court which in 1973 issued the opinion cited as State, ex rel., v. Board of Education, 212 Kan. 482, more commonly known as the “Peabody” case. In “Peabody”, the Supreme Court held:

“That part of article 6, Section 2(a) of the Kansas Constitution granting to the state board of education authority to exercise general supervision of the public schools, educational institutions and educational interests of the state, except educational functions delegated by law to the state board of regents, is self-executing in effect.”

The court also stated:

“A self-executing provision of a constitution is a provision requiring no supplementary legislation to make it effective and leaving nothing to be done by the legislature to put it in operation.”

Moreover, the Court held:

“Where a constitutional provision is self-executing the legislature may enact legislation to facilitate or assist in its operation, but whatever legislation is adopted must be in harmony with and not in derogation of the provisions of the constitution.”

The “Peabody” decision struck the Legislature like a bolt of lightning and in the 26 years hence there have been many attempts to thwart the decision by constitutional amendment:

<u>Year</u>	<u>Proposal</u>
1974	SCR No. 76 by Senator W. H. Sowers. A proposition to replace the elected 10-member state board of education with an appointed nine-member state board of education.
	SCR No. 122 by Senate Committee on Education. A proposition to rescind the “self-executing” authority of the state board of education and to provide authority for the legislature to establish a state board of community colleges. This proposal was submitted to the electorate in 1974 and failed by a vote of 130,265 for and 141,492 against.
1975	SCR No. 24 by Senate Committee on Education. A proposition to rescind the “self-executing” authority of the state board of education.
1976	HCR No. 5068 by Representative Duane McGill. A proposition to provide for gubernatorial appointment of the state board of education.

- 1978 SCR No. 1646 by Senator W. H. Sowers.
A proposition to replace the elected 10-member state board of education with an appointed nine-member state board of education.
- 1979 SCR No. 1621 by Senator Joseph C. Harder.
A proposition to replace the elected 10-member state board of education with an appointed nine-member state board of education.
- 1980 SCR No. 1671 by Committee on Legislative, Congressional and Judicial Apportionment.
A proposition to rescind the requirement that each state board of education member district be comprised of four senatorial districts.
- 1981 SCR No. 1626 by Senator Elwaine Pomeroy.
A proposition to rescind the requirement that each state board of education member district be comprised of four senatorial districts.
- 1982 SCR No. 1653 by Senate Committee on Education.
A proposition to rescind the “self-executing” authority of the state board of education.
- 1984 SCR No. 5077 by Representative John Michael Hayden and 72 others.
A proposition to rescind the “self-executing” authority of the state board of education, replace the elected 10-member state board of education with an appointed nine-member state board of education, and to provide authority for the legislature to establish a state board of community colleges.
- 1986 HCR No. 5028 by Representatives Elizabeth Baker and Ron Fox.
A proposition to rescind the “self-executing” authority of the state board of education, and to subject the commissioner of education to confirmation by the senate. This proposal was submitted to the electorate in 1986 and failed by a vote of 365,235 for and 385,093 against.
- SCR No. 1634 by Senate Committee on Education.
A proposition to rescind the “self-executing” authority of the state board of education, replace the elected 10-member state board of education with an appointed nine-member state board of education, and to subject the commissioner of education to confirmation by the senate.

- 1988 SCR No. 1613 by Legislative Educational Planning Committee.
A proposition to revise the education article by removing all references to the state board of education and the state board of regents and authorizing the legislature to determine the instrumentalities of governance of the system of public education that are deemed necessary and to prescribe the powers and duties of such instrumentalities. The proposition also removed the authority for the levy of taxes for state higher education institutions and in lieu thereof authorized a state levy for the entire system of public education in the state. The LEPC position was that it was not the intention of the Legislature to create in the Constitution a state board of education with powers that could be construed to be self-executing. Furthermore, the LEPC regarded the present education article as too restrictive because it contains specific details about education governance that more appropriately should be statutory. The LEPC's view was that a constitution should contain general principles that are to be implemented through legislation. Those principles are likely not to change and, thus, the constitution would be a document to endure over the years. The specific statutory provisions that implement those principles, however, would almost certainly change, a reflection of changes in attitudes toward governance, funding, and education in general.
- 1989 SCR No. 1623 by Senator Michael Johnston and 25 others.
This proposition was identical to 1988 SCR No. 1613 (above).

HCR No. 5010 by House Committee on Elections.
This proposition was identical to 1989 SCR No. 1623 and 1988 SCR No. 1613 (both above), was submitted to the electorate in 1990, and failed by a vote of 245,132 for and 377,625 against.
- 1990 HCR No. 5032 by Special Committee on Federal and State Affairs/Governmental Organization and Special Committee on Legislative, Judicial and Congressional Apportionment.
A proposition to rescind the requirement that each state board of education member district be comprised of four senatorial districts.

HCR No. 5042 by Representative Rick Bowden and 2 others.
A proposition to rescind the "self-executing" authority of the state board of education and to replace the method of selection of the state board of education from election to appointment by the governor.

- 1991 SCR No. 1610 by Senate Committee on Education.
A proposition to rescind the “self-executing” authority of the state board of education, authorize the Legislature to provide instrumentalities of governance of the system of public education in addition to the state board of education and the state board of regents, increase the number of state board of education members from 10 to 11, and to authorize the governor to appoint a secretary of education.
- HCR No. 5001 by Joint Committee on Economic Development.
A proposition to provide for a state board of community colleges and vocational-technical education.
- 1993 HCR No. 5016 by House Committee on Education.
A proposition to increase the membership on the state board of education from 10 to 11, authorize the legislature to prescribe qualifications for membership on the state board of education, and rescind the “self-executing” authority of the state board of education.
- 1995 HCR No. 5021 by Representatives Powers and Powell and 11 others.
This proposition was identical to 1988 SCR No. 1613, 1989 SCR No. 1623 and 1989 HCR No. 5010 (all above).
- 1996 HCR No. 5040 by Representatives Tanner and Sloan and 26 others.
A proposition to rescind the “self-executing” authority of the state board of education, to authorize the governor (in lieu of the state board of education) to appoint the commissioner of education, and to appoint a commissioner of higher education. Both commissioners to be selected after consideration of nominees submitted by the state board, to be subject to confirmation by the senate, to be members of the governor’s cabinet, and to serve as liaison between the governor and the state boards.
- 1997 HCR No. 5008 by Representatives Tanner and Sloan.
A proposition to rescind the “self-executing” authority of the state board of education, to authorize the governor (in lieu of the state board of education) to appoint the commissioner of education after consideration of a list of nominees submitted by the state board of education. The commissioner would be subject to confirmation by the senate, be a member of the governor’s cabinet, serve as a liaison between the governor and the state board of education.
- 1998 HCR No. 5049 by House Select Committee on Higher Education.
A proposition to abolish the state board of regents and provide for a Kansas council on higher education.

(1998) SCR No. 1615 by Special Committee on Education.
A proposition to rescind the “self-executing” authority of the state board of education.

1999 HCR No. 5008 by Representative Sloan.
This proposition was identical to 1997 HCR No. 5008 (above).

HCR No. 5029 by Representative Adkins.
A proposition to increase the number of members on the state board of education from 10 to 11 with the provision that one member be appointed by and serve at the pleasure of the governor. The other 10 members would continue to be elected from 10 member districts, but candidates for office would be nonpartisan and candidates receiving the highest and second highest number of votes in the primary election would be the two candidates for election in the general election.

2000
(Prefiled) SCR No. 1621 by Senator Emert.
A proposition to increase the number of members on the state board of education from 10 to 11 with the provision that one member be appointed by and serve at the pleasure of the governor. The other 10 members would continue to be elected as currently provided by law.